



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 73 and 74**

**[AU Docket No. 17-351; DA 18-257]**

**Auction of FM Translator Construction Permits Scheduled for June 21, 2018; Notification of Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 83**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final action; requirements and procedures.

**SUMMARY:** In this document, the Commission summarizes the procedures and announces upfront payments amounts and minimum opening bids for the auction of FM translator construction permits (Auction 83). The document summarized here is intended to familiarize applicants with the procedures and other requirements for participation in the auction.

**DATES:** April 16, 2018, and until 6:00 p.m. Eastern Time (ET) on April 26, 2018, each Auction 83 applicant must review, verify or update its previously-filed short-form applications (FCC Forms 175) electronically. Bidding in Auction 83 is scheduled to start on June 21, 2018.

**FOR FURTHER INFORMATION CONTACT:** For auction legal questions, Lynne Milne in the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division at (202) 418-0660. For auction process and procedures, the FCC Auction Hotline at (717) 338-2868. For FM translator service questions, James Bradshaw, Lisa Scanlan or Tom Nessinger in the Media Bureau's Audio Division at (202) 418-2700. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of Commission's document (*Auction 83 Procedures Public Notice*), AU Docket No. 17-351; DA 18-257, released on March 16, 2018. The complete text of this document is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference

Information Center, 445 12th Street S.W., Room CY-A257, Washington, DC 20554. The complete text of this document and related documents also are available on the Internet at the Commission's website: <http://wireless.fcc.gov/auctions/83>, or by using the search function for AU Docket No. 17-351 on the Commission's Electronic Comment Filing System (ECFS) web page at <http://www.fcc.gov/cgb/ecfs>.

## **I. GENERAL INFORMATION**

### **A. Background**

1. On February 6, 2003, the Media and Wireless Telecommunications Bureaus announced an auction filing window for applications for new FM translator stations and major modifications to authorized FM translator facilities in the non-reserved band (Channels 221 to 300). By Public Notices released May 21, 2013 and April 30, 2014, the Bureaus provided a list of all applications received during the filing window with engineering proposals that were mutually exclusive (MX) with engineering proposals in other applications submitted in the filing window. Applicants were previously given the opportunity to eliminate their mutual exclusivity with other applicants' engineering proposals by settlement or technical modification to their proposals. The Bureaus will now proceed to auction with the 43 MX groups identified in Attachment A of the *Auction 83 Procedures Public Notice*.

### **B. Construction Permits and Entities Eligible to Participate in Auction 83**

2. Auction 83 will resolve mutually exclusive applications for up to 43 new FM translator construction permits. A list of the locations and channels of these proposed stations is included as Attachment A to the *Auction 83 Procedures Public Notice*. Attachment A also sets forth the names of applicants in each MX group along with a minimum opening bid and an upfront payment amount for each construction permit in Auction 83.

3. An applicant listed in Attachment A may become qualified to bid only if it meets the additional filing, qualification and payment requirements and otherwise complies with applicable requirements described in the *Auction 83 Procedures Public Notice*. Each applicant may become a qualified bidder only for those construction permits specified for that applicant in Attachment A to the *Auction 83 Procedures Public Notice*. Each of the engineering proposals within each MX group are

directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A. Once mutually exclusive applications are accepted, because mutual exclusivity exists for auction purposes, an applicant for a particular construction permit cannot obtain it without placing a bid, even if no other applicant for that construction permit becomes qualified to bid or in fact places a bid. While the *Auction 83 Comment Public Notice* had sought comment on whether certain changes made since 2003 to 47 CFR 1.2105 warranted any different approach in this context, no commenter directly addressed this issue. The Bureaus do not see any reason to depart from established precedent for Auction 83.

4. Section 1.2105(b)(2) provides that an auction applicant that undertakes a major change, including a change of ownership that would constitute an assignment or transfer of control, after the short-form application filing deadline will be disqualified from participating in bidding. In the *Auction 83 Comment Public Notice* (see 83 FR 4455, Jan. 31, 2018), the Bureaus sought comment on whether to waive 47 CFR 1.2105(b)'s prohibition on major changes with respect to transfers of control or assignments that had occurred prior to release of the *Auction 83 Comment Public Notice* and/or that have been subject to Commission review and approval by a particular date. In response to the *Auction 83 Comment Public Notice*, iHeart, the parent company of three Auction 83 applicants, filed comments supporting grant of waivers of 47 CFR 1.2105(b)(2)'s bar on major modifications to allow iHeart applicants to participate in Auction 83, and one applicant filed an opposition seeking denial of the requested relief.

5. The Bureaus decided that under the unique factual circumstances, application of the rule would be unduly burdensome to Auction 83 applicants that have completed a transfer of control or assignment that was authorized by the Commission during a period of approximately 15 years. In accordance with 47 CFR 1.3, the Bureaus waive 47 CFR 1.2105(b)(2)'s bar on major modifications for any Auction 83 applicant, such as iHeart or any other similarly-situated party, that has completed a transfer of control or assignment pursuant to a transaction that has been reviewed and approved by the Commission prior to the close of the remedial filing window on April 26, 2018. An applicant seeking to

participate in Auction 83 pursuant to this relief should include with its updated Form 175 during the upcoming remedial filing window a brief explanation of any changes it has undertaken during the pendency of its Form 175, including relevant details such as citations to or file numbers of Commission authorizations for such changes.

6. In light of the amendments to the Commission's competitive bidding rules in 2015, the Bureaus also sought comment in the *Auction 83 Comment Public Notice* on how to apply 47 CFR 1.2105's provisions that prohibit the filing of multiple auction applications by applicants subject to common control. The amended rules require entities with any overlapping controlling interest to participate in an auction through just a single auction application. The only party to address this issue, iHeart, supports the Bureaus proposal to require applicants subject to common control to participate through a single bidding entity in a single application covering all of the MX engineering proposals applied for previously by the separate commonly controlled applicants. The Bureaus waived the current rule's application to the originally filed Forms 175, which pre-dated the current rule by more than a decade, and to permit applicants to come into compliance with the current rule by modifying the relevant auction applications as necessary to come into compliance. Accordingly, any Auction 83 applicants with overlapping controlling interests will be permitted to amend their Forms 175 to participate as a single bidding entity. Specifically, on or before March 30, 2018, applicants that have a controlling interest in more than one Form 175 listed in Attachment A to the *Auction 83 Procedures Public Notice* were required to bring those commonly controlled applications into compliance with the restrictions of 47 CFR 1.2105(a)(3) by filing a written request as an attachment to an email sent to auction83@fcc.gov. This written request was required to identify by applicant name and applicant FCC registration number (FRN) each of that applicant's 2003 Forms 175 listed in Attachment A in which there is common control, as well as identification of the individual or entity with such common control. This email was required to request consolidation of the previously filed Forms 175 in Attachment A with common control. The request had to be signed by a person who is an authorized representative of the applicant with authority to bind that

applicant. After consolidation, the remaining single applicant was required to update, certify and submit its FCC Form 175 during the remedial filing window.

## **C. Rules and Disclaimers**

### **1. Relevant Authority**

7. Applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's commercial FM translator broadcast service and competitive bidding requirements contained in 47 CFR parts 73 and 74, as well as Commission orders concerning competitive bidding. Applicants must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 83 Procedures Public Notice* and any future public notices that may be released in this proceeding.

8. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in their public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of each applicant to remain current with all Commission rules and with all public notices pertaining to Auction 83.

### **2. Prohibited Communications and Compliance with Antitrust Laws**

9. Starting with the initial application filing deadline on March 17, 2003, the rules prohibiting certain communications set forth in 47 CFR 1.2105(c) and 73.5002(d) and (e) apply to each applicant that filed a FCC Form 175 in Auction 83. Subject to specified exceptions, 47 CFR 1.2105(c)(1) provides that, after the deadline for filing a short-form application, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after

the down payment deadline. Applicants are hereby placed on notice that public disclosure of information relating to bids, bidding strategies, or to post-auction market structures may violate 47 CFR 1.2105(c).

**a. Entities Subject to Section 1.2105**

10. An applicant for purposes of this rule includes the officers and directors of the applicant, all controlling interests in the entity submitting the FCC Form 175, as well as all holders of interests amounting to 10 percent or more of the entity, and all officers and directors of that entity. A party that submits an application becomes an applicant under the rule at the application deadline and that status does not change based on subsequent developments. Thus, an auction applicant that does not make and submit update to its Form 175 during the upcoming remedial filing window, correct deficiencies in its application, fails to submit a timely and sufficient upfront payment or does not otherwise become qualified, remains an applicant for purposes of 47 CFR 1.2105(c) and remains subject to the prohibition on certain communications until the applicable down payment deadline.

**b. Scope of Prohibition on Communications; Prohibition on Joint Bidding Agreements**

11. The Commission in 2015 amended 47 CFR 1.2105(c) to extend its prohibition on communications to cover all applicants for an auction regardless of whether the applicants seek permits in the same geographic area or market. Accordingly, the Commission now prohibits joint bidding arrangements, including arrangements relating to the licenses being auctioned that address or communicate, directly or indirectly, bids, bidding at the auction, bidding strategies, including arrangements regarding price or the specific construction permits or licenses on which to bid, and any such arrangements relating to the post-auction market structure. The revised rule provides limited exceptions for communications within the scope of any arrangement consistent with the exclusions from the Commission's rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application. An applicant may continue to communicate pursuant to any pre-existing agreement, arrangement, or understanding that is solely operational or that provide for a transfer or assignment of licenses, provided that such agreement, arrangement or understanding does not involve the

communication or coordination of bids (including amounts), bidding strategies, or the particular licenses on which to bid and provided that such agreement, arrangement or understanding is disclosed on its application.

12. In the *Auction 83 Comment Public Notice*, the Bureaus sought comment on whether waiver of certain provisions of 47 CFR 1.2105 might be appropriate or necessary in light of the passage of time since the 2003 filing of the original Auction 83 Forms 175, the rule revisions in 2015, and the business changes that applicants may have undergone. The Bureaus noted that some Auction 83 applicants and their pending applications might not be in compliance with the current 47 CFR 1.2105 provisions regarding joint bidding agreements and auction-related communications. No comment was filed on this issue in response to the *Auction 83 Comment Public Notice*. No party has filed notice of any potential violation of the provisions of 47 CFR 1.2105(c) with respect to prohibited bidding agreements or communications. Consequently, the Bureaus find no cause to waive the relevant rules.

**c. Section 1.2105(c) Certification**

13. By electronically submitting its Form 175, each applicant in Auction 83 certified its compliance with 47 CFR 1.2105(c) and 73.5002(d). However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

**d. Reporting Requirements**

14. Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

**e. Procedures for Reporting Prohibited Communications**

15. Section 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 83 Procedures Public Notice*. For Auction 83, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to Margaret W. Wiener at the following e-mail address: auction83@fcc.gov. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room 6C217, Washington, DC 20554.

16. Section 1.2105(c) is designed to minimize the risk of inadvertent dissemination of information in such reports. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection, such as, a submission to the Commission's Office of the Secretary or to the Commission's Electronic Comment Filing System. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.

**f. Winning Bidders Must Disclose Terms of Agreements**

17. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement it has entered into. This



applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

**g. Antitrust Laws**

18. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

19. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the U.S. Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, the applicant may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

**3. Due Diligence**

20. The Bureaus remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for commercial FM translators that it is seeking in this auction. The FCC makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

21. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureaus strongly encourage each potential

bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 83 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Bureaus strongly encourage each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

22. The Bureaus strongly encourage each applicant to continue to conduct its own research throughout Auction 83 in order to determine the existence of pending or future administrative or judicial proceedings—including applications, applications for modification, rulemaking proceedings, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review—may relate to particular applicants or the licenses available in Auction 83 (or the terms and conditions thereof, including all applicable Commission rules and regulations) and might affect an applicant's decision on continued participation in the auction. Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction. The due diligence considerations mentioned in the *Auction 83 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

23. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 83. Each potential bidder is responsible for undertaking research to ensure that any permits won in Auction 83 will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

24. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

#### **4. Use of Auction Systems**

25. The Commission makes no warranty whatsoever with respect to the FCC auction systems. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC auction systems that are accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC auction systems.

### **D. Auction Specifics**

#### **1. Bidding Methodology and Options**

26. The Commission will conduct this auction over the Internet using the FCC auction bidding system. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

27. The initial schedule for bidding rounds will be announced by public notice at least one week before bidding in the auction starts. Moreover, unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

#### **2. Pre-Auction Dates and Deadlines**

28. The following dates and deadlines apply:

Auction Tutorial Available (via Internet) .....April 12, 2018

Short-Form Application (FCC Form 175)

Remedial Filing Window Opened.....April 16, 2018; 12:00 noon ET

Short-Form Application (FCC Form 175)

Remedial Filing Window Deadline.....April 26, 2018; prior to 6:00 p.m. ET

Upfront Payments (via wire transfer).....May 31, 2018; 6:00 p.m. ET

Mock Auction .....June 15, 2018

Auction Begins.....June 21, 2018

### **3. Requirements for Participation**

29. A party whose application is listed on Attachment A of the *Auction 83 Procedures Public Notice* may participate in the bidding in Auction 83 only if the applicant:

- During the remedial filing window, provides sufficient information in the data fields of its electronic FCC Form 175 that it is able to certify and submit its auction application. Instructions for submitting an updated application are provided in the *Auction 83 Procedures Public Notice*.
- In the event that the application is found to be incomplete after Commission staff review, an applicant will have a limited opportunity to address deficiencies in its application during a resubmission window, the dates for which will be announced in a future public notice.
- If an applicant fails to provide sufficient information in the data fields of its electronic Form 175 the applicant therefore will not be able to certify and submit its Form 175. If an Auction 83 applicant fails to certify and submit its Form 175 during the remedial window, that auction application will be designated as Incomplete-Disqualified. If an application is designated as Incomplete-Disqualified, that applicant will have no further opportunity to update its application, and the applicant will be disqualified from further participation in Auction 83.

- Submits a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on May 31, 2018, following the procedures and instructions set forth in Attachment C to the *Auction 83 Procedures Public Notice*; and
- Complies with all provisions outlined in the *Auction 83 Procedures Public Notice* and applicable Commission rules.

## II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

### A. Updating Applicant's FCC Form 175 in Auction Application System—Remedial Filing Window Closes April 26, 2018

30. To qualify to participate in bidding, each Auction 83 applicant must provide sufficient information in the data fields of its electronic FCC Form 175 that it is able to certify and submit its auction application, in compliance with the Commission's competitive bidding rules and the procedures and deadlines set forth in the *Auction 83 Procedures Public Notice*. Attachment B of the *Auction 83 Procedures Public Notice* contains detailed instructions for updating and verifying short-form applications.

31. Applicants must make necessary updates and certifications, and must verify short-form application information during a remedial filing window. The window opened at noon ET on April 16, 2018, and will close at 6:00 p.m. ET on April 26, 2018.

32. Each Auction 83 applicant is required to review its FCC Form 175 in the auction application system to insure that all relevant information is provided and that the information contained in the application is accurate and complete at this time. Each applicant must provide updates or revisions of previously submitted information, consistent with the requirements of 47 CFR 1.65. The auction application system will permit an applicant to navigate to the certify and submit screen in its Form 175 only after providing required disclosures of information in specified data entry fields. An applicant may also be required to upload an attachment to its Form 175 application in some circumstances. Each applicant is advised to begin its application updating process early during the remedial filing window so

that it can certify and submit its FCC Form 175 prior to the close of the remedial filing window. Each Auction 83 applicant must certify and submit any updates prior to 6:00 p.m. ET on April 26, 2018.

**B. Minor Modifications to Short-Form Applications**

33. Notwithstanding the relief from 47 CFR 1.2105(b)'s major change restriction for past transactions as discussed in the *Auction 83 Procedures Public Notice*, at this stage in the application process, an Auction 83 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. If revised or updated information constitutes a "major amendment," as defined by 47 CFR 1.2105, such changes may result in the dismissal of the application. In this context, major amendments include a change of technical proposals, change control of the applicant, claim eligibility for a higher percentage of bidding credit, or change the identification of the application's proposed facilities as noncommercial educational after the initial application filing deadline.

**C. Maintaining Current Information in Short-Form Applications**

34. As required by 47 CFR 1.65 and 1.2105(b), an applicant must maintain the accuracy and completeness of all information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence, or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified in the application must be reported immediately, and no later than five business days after the change occurs.

**D. Submission of Updates to Short-Form Applications**

35. Updates to short-form applications should be made electronically using the FCC auction application system whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button.

36. An applicant can use the auction application system outside of the remedial and resubmission filing windows to make administrative and certain other changes to its short-form application. After the resubmission filing window has closed, the system will permit applicants to modify information in most of the application's data fields.

37. If changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the auction application system. Any letter describing changes to an applicant's short-form application must be addressed to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, and submitted by e-mail to [auction83@fcc.gov](mailto:auction83@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 83 and the name of the applicant, for example, "Re: Changes to Auction 83 Short-Form Application of ABC Corp." The Bureaus request that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

38. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding procedures for conducting Auction 83.

39. Applicants should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the person certifying the application that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

**E. Electronic Review of Short-Form Applications**

40. During the remedial filing window, an applicant listed in Attachment A of the *Auction 83 Procedures Public Notice* must review and update its electronic FCC Form 175 in the auction application system. There is no fee to access this system. See Attachment B of the *Auction 83 Procedures Public Notice* for details on accessing the auction application system. During the remedial filing window, each Auction 83 applicant listed in Attachment A must, at a minimum, certify and submit its Form 175.

**F. Provisions Regarding Former and Current Defaulters**

41. Pursuant to the rules governing competitive bidding, each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 83. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates (as defined by 47 CFR 1.2110), any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for FCC Forms 175 in that auction. Accordingly, each applicant must certify under penalty of perjury on its Form 175 that the applicant, any of its affiliates, any of its controlling interests, and any of the affiliates of its controlling interests are not in default on any payment for a Commission construction permit or license (including a down payment) and are not delinquent on any non-tax debt owed to any Federal agency. For purposes of making this certification, the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i). If an Auction 83 applicant has an outstanding non-tax debt to the Commission or any other federal agency, including any debts that results in a listing of the applicant on the Commission's Red Light Display System, as of the closing deadline of the remedial filing window, the applicant will be unable to make the required certification that it is not currently in default; if so, such applicant will be not eligible to participate in Auction 83 bidding.

42. An Auction 83 applicant is considered a former defaulter or a former delinquent when the applicant or any of its controlling interests (as defined by 47 CFR 1.2105(a)(4)(i)) has defaulted on any Commission construction permit or license (including a down payment) or has been delinquent on any



non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies prior to the remedial filing deadline in this auction. A former defaulter or a former delinquent may participate further in Auction 83 so long as it is otherwise qualified, and that applicant makes an upfront payment that is 50 percent more than would otherwise be required. An applicant must certify under penalty of perjury whether it, along with any of its controlling interests, has ever been in default on any payment for a Commission construction permit or license (including a down payment) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions described in the *Auction 83 Procedures Public Notice*.

43. In 2015, the Commission narrowed the scope of the individuals and entities to be considered a former defaulter or a former delinquent. For purposes of the certification under 47 CFR 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license or delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) the notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline; (2) the default or delinquency amounted to less than \$100,000; (3) the default or delinquency was paid within six months after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.

44. Applicants are encouraged to review previous guidance provided by the Wireless Telecommunications Bureau on default and delinquency disclosure requirements in the context of the auction short-form application process. For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to consult with the Wireless Telecommunications

Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

45. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement its obligations under the Debt Collection Improvement Act of 1996, but the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

46. The Bureaus remind each applicant, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

47. Moreover, applicants in Auction 83 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. The Bureaus strongly encourage each applicant to carefully review all records and other available federal agency databases and information sources to determine whether the applicant, or any of its affiliates (as defined in 47 CFR 1.2110), or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any federal agency.

### **III. PRE-AUCTION PROCEDURES**

#### **A. Online Tutorial on Bidding Process – Available April 12, 2018**

48. An educational auction tutorial became available on the Auction 83 web page on Thursday, April 12, 2018. The tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in the *Auction 83 Procedures Public Notice*.

**B. Revised Short-Form Applications – Due Prior to 6:00 p.m. ET on April 26, 2018**

49. During the remedial filing window, each Auction 83 applicant listed in Attachment A must, at a minimum, provide sufficient information in the data fields of the form such that it is able to certify and submit its Form 175 via the FCC’s auction application system. If any information in its Form 175 or its attachments is inaccurate or otherwise needs to be updated, any such changes must be reported in its Form 175 during the upcoming remedial filing window. Attachment B of the *Auction 83 Procedures Public Notice* contains instructions for updating short-form applications in the remedial window. Updates to the short-form application must be submitted prior to 6:00 p.m. ET on April 26, 2018. No application fee is required.

50. Previously submitted short-form applications may be viewed and updated at any time from noon ET on April 16, 2018, until the filing window closes at 6:00 p.m. ET on April 26, 2018. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the remedial filing deadline at 6:00 p.m. ET on April 26, 2018.

51. An applicant must click on the SUBMIT button on the “Certify & Submit” screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff.

**C. Application Processing and Corrections of Deficiencies**

52. The Commission will process all applications for permits listed in Attachment A of the *Auction 83 Procedures Public Notice* that are certified and submitted during the remedial filing window to determine which are complete, incomplete, or incomplete-disqualified. Subsequent to the remedial filing window the Bureaus will issue a public notice identifying the status of each application. An applicant whose application is incomplete will have a limited opportunity to address deficiencies during a resubmission window, the dates for which will be announced in a future public notice. If a listed Auction 83 applicant does not certify and submit its Form 175 auction application during the remedial filing

window, its application will be designated as incomplete-disqualified, and the applicant will be disqualified from further participation in Auction 83.

53. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by e-mail to [auction83@fcc.gov](mailto:auction83@fcc.gov).

#### **D. Upfront Payments – Due May 31, 2018**

54. In order to be eligible to bid in this auction, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159) must be submitted prior to 6:00 p.m. ET on May 31, 2018, following the procedures outlined below and the instructions in Attachment C to the *Auction 83 Procedures Public Notice*. After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159. This Form 159 can be printed and the completed form must be sent by fax to the FCC at (202) 418-2843.

##### **1. Making Upfront Payments by Wire Transfer**

55. Wire transfer payments must be received before 6:00 p.m. ET on May 31, 2018. No other payment method is acceptable. Specifically, the Commission will not accept checks, credit cards or automated clearing house payments. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. The BNF Account Number is specific to the upfront payments for this auction. Do not use BNF Account Number from previous auctions. The following information will be needed:

ABA Routing Number: 021000021

Receiving Bank: JP Morgan Chase

BENEFICIARY: FCC/Account # 267516869

Originating Bank Information (OBI Field): (Skip one space between each information item)

“AUCTIONPAY”

APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "U083")

FCC CODE 1: (same as FCC Form 159, block 28A: "83")

PAYER NAME: (same as FCC Form 159, block 2)

PAYER FCC REGISTRATION NUMBER (FRN): (If different from applicant FRN): #

56. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to the FCC at (202) 418-2843. On the fax cover sheet, write "Wire Transfer – Auction Payment for Auction 83." In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 83 before the deadline.

57. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to JP Morgan Chase was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418-0578, or alternatively, Theresa Meeks at (202) 418-2945.

58. All upfront payments must be made in U.S. dollars. All upfront payments must be made by wire transfer. Upfront payments for Auction 83 go to an account number different from the accounts used in previous FCC auctions. Failure to deliver a sufficient upfront payment as instructed in the *Auction 83 Procedures Public Notice* by the deadline on May 31, 2018 will result in dismissal of the short-form application and disqualification from further participation in the auction.

## **2. FCC Form 159**

59. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to the FCC at (202) 418-2843 to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate.

## **3. Upfront Payments and Bidding Eligibility**

60. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The Bureaus proposed in the *Auction 83 Comment Public Notice* that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. The Bureaus received no comment on the proposal that the upfront payment amount would determine a bidder's initial bidding eligibility, and this proposal is adopted.

61. Under the Bureaus' proposal, in order to bid on a particular construction permit, otherwise qualified bidders that are designated in Attachment A of the *Auction 83 Procedures Public Notice* for that construction permit must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the *Auction 83 Procedures Public Notice*, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits designated for that applicant in Attachment A of the *Auction 83 Procedures Public Notice*, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round. (A provisionally winning bid is a bid that would become a final winning bid if

the auction were to close after the given round.) The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

62. In the *Auction 83 Comment Public Notice*, the Bureaus proposed an upfront payment for each construction permit, taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum, and sought comment on this proposal. The Bureaus received no comment on the specified upfront payment amounts for each construction permit in Auction 83, and the proposed upfront payment amounts are adopted. The specific upfront payment amounts and bidding units for each construction permit are set forth in Attachment A of the *Auction 83 Procedures Public Notice*.

63. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline. A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A of the *Auction 83 Procedures Public Notice*.

64. Applicants that are former defaulters, as described in the *Auction 83 Procedures Public Notice*, must pay upfront payments 50 percent greater than non-former defaulters. For this classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included. For this purpose, the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i). If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the *Auction 83 Procedures Public Notice*, that applicant will not be eligible to participate further in Auction

83. This applicant will retain its status as an applicant in Auction 83, and will remain subject to 47 CFR 1.2105(c) and 73.5002(d).

65. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

#### **E. Auction Registration**

66. At least one week before the beginning of bidding in the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely filed, accurate, and substantially complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

67. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the web address and instructions for accessing and logging in to the auction bidding system, an FCC assigned username (User ID) for each authorized bidder, and the Auction Bidder Line phone number.

68. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Thursday, June 14, 2018, the contact, certifier or authorized bidder listed on that applicant's Form 175 needs to call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

69. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call Technical



Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

**F. Remote Electronic Bidding**

70. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference, electronic or telephonic, on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, bidding system web address, FCC assigned username, and the telephonic bidding telephone number are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 83.

**G. Mock Auction – June 19, 2018**

71. All qualified bidders will be eligible to participate in a mock auction on Tuesday, June 19, 2018. The mock auction will enable bidders to become familiar with the FCC auction bidding system prior to the auction. The Bureaus strongly recommend that all bidders participate in the mock auction. Details will be announced by public notice.

**IV. AUCTION**

72. The first round of bidding for Auction 83 will begin on Thursday, June 21, 2018. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released at least one week before the start of the auction.

**A. Auction Structure**

**1. Simultaneous Multiple Round Auction**

73. In the *Auction 83 Comment Public Notice*, the Bureaus proposed to auction all construction permits listed in Attachment A of the *Auction 83 Procedures Public Notice* in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of

auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. The Bureaus received no comment on this proposal, and this proposal is adopted. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

## **2. Eligibility and Activity Rules**

74. As discussed in the *Auction 83 Procedures Public Notice*, the Bureaus will use upfront payments to determine initial (maximum) bidding eligibility (as measured in bidding units) for Auction 83. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units as listed in Attachment A of the *Auction 83 Procedures Public Notice*. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits for which it is designated an applicant in Attachment A of the *Auction 83 Procedures Public Notice* as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and therefore its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid or hold provisionally winning bids in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits for which it is designated an applicant in Attachment A of the *Auction 83 Procedures Public Notice*. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit. The Bureaus received no comments on the bidding eligibility proposals, and these proposals are adopted.

75. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

76. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new bids in the current round and provisionally winning bids from the previous round. A provisionally winning bid is a bid that would become a final winning bid if the auction were to close after the given round.

77. The Bureaus received no comment on the activity rule proposal. Therefore, the Bureaus adopt the following activity requirement: a bidder is required to be active on 100 percent of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction

### **3. Activity Rule Waivers**

78. In the *Auction 83 Comment Public Notice*, the Bureaus proposed that each bidder in the auction be provided with three activity rule waivers. The Bureaus received no comment on this issue.

79. Therefore, the Bureaus adopt this proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

80. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility.

Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

81. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the *reduce eligibility* function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the activity rule described in the *Auction 83 Procedures Public Notice*. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

82. Also, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply an activity rule waiver (using the *proactive waiver* function in the FCC auction bidding system) during a bidding round in which no bid is placed, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid or no proactive waiver will not keep the auction open.

#### **4. Auction Stopping Rule**

83. For Auction 83, the Bureaus proposed to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid or applies a proactive waiver.

84. The Bureaus also sought comment on alternative versions of the simultaneous stopping rule for Auction 83. (1) The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bid on a construction permit for which it is not the

provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping procedure. (2) The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bid on a construction permit that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not have a provisionally winning bid) would not keep the auction open under this modified stopping procedure. (3) The auction would close using a modified version of the simultaneous stopping procedure that combines options (1) and (2). (4) The auction would close after a specified number of additional rounds (special stopping procedure) to be announced by the Bureaus. If the Bureaus invoke this special stopping procedure, they will accept bids in the specified final round(s), after which the auction will close. (5) The auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

85. The Bureaus proposed to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus received no comment on these proposals and adopt them for Auction 83.

## **5. Auction Delay, Suspension, or Cancellation**

86. The Bureaus received no comment on their proposals in the *Auction 83 Comment Public Notice* regarding auction delay, suspension, or cancellation, and adopt them. By public notice and/or by announcement through the FCC auction bidding system, the Bureaus may delay, suspend, or cancel

bidding in the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that they will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

## **B. Bidding Procedures**

### **1. Round Structure**

87. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released at least one week before the start of bidding in the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

88. In the *Auction 83 Comment Public Notice*, the Bureaus proposed to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus received no comment on these proposals, and adopt them for Auction 83. The Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

### **2. Reserve Price and Minimum Opening Bids**

89. A reserve price is an absolute minimum price below which a construction permit or license will not be sold in a specific auction. In the *Auction 83 Comment Public Notice*, the Bureaus did not propose to establish reserve prices for the construction permits listed in Attachment A. The Bureaus did not receive comment on this proposal, and adopt it.

90. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. The Bureaus in the *Auction 83 Comment Public Notice* sought comment on specifically proposed minimum opening bid amounts for each construction permit listed in Attachment A to the *Auction 83 Procedures Public Notice*. Specifically, a minimum opening bid was proposed for each construction permit by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, industry cash flow data, and recent broadcast transactions.

91. The Bureaus received no comment on the proposed minimum opening bid amounts, and therefore the Bureaus adopt the minimum opening bid amounts proposed in the *Auction 83 Comment Public Notice*. The specific minimum opening bid amounts for each of the construction permits are again specified in Attachment A to the *Auction 83 Procedures Public Notice*.

### **3. Bid Amounts**

92. In the *Auction 83 Comment Public Notice*, the Bureaus proposed that in each round, if the bidder has sufficient eligibility to place a bid on the particular construction permit, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts. Under the proposal, the FCC auction bidding system interface will list the nine acceptable bid amounts for each construction permit. The Bureaus received no comment on this proposal; therefore, it is adopted.

93. For calculation of the nine acceptable bid amounts for each construction permit, the Bureaus did not receive any comment on a proposal to use 10 percent for a minimum acceptable bid increment percentage and to use 5 percent for an additional bid increment percentage. Therefore, the Bureaus will begin the auction with a minimum acceptable bid increment percentage of 10 percent and an additional bid increment percentage of 5 percent.

94. In Auction 83, the minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid

amount will be calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage, i.e., provisionally winning bid amount \* 1.10, rounded under the Commission's standard rounding procedures for auctions as described in the *Auction 83 Procedures Public Notice*.

95. In Auction 83, the FCC auction bidding system will calculate the eight additional bid amounts by multiplying the minimum acceptable bid amount by the additional bid increment percentage of 5 percent, and that result (rounded) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount, etc. Because the additional bid increment percentage is 5 percent, the calculation of the additional increment amount is (minimum acceptable bid amount) \* (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2\*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3\*(additional increment amount)); etc.

96. The Bureaus proposed to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the additional bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus proposed to retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also proposed to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable



bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid.

97. The Bureaus did not receive any comment on their proposals to retain the discretion to change bid amounts as described in the *Auction 83 Procedures Public Notice*, if they determine that circumstances so dictate. The Bureaus adopt these proposals. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC auction bidding system during the auction.

#### **4. Provisionally Winning Bids**

98. The FCC auction bidding system at the end of each bidding round will determine a *provisionally winning bid* for each construction permit based on the highest bid amount received for that permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids.

99. In the *Auction 83 Comment Public Notice*, the Bureaus proposed to use a pseudo-random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids). No comments were received on this proposal. Hence, the Bureaus adopt this tied bids proposal.

100. Accordingly, the FCC auction bidding system will assign a pseudo-random number to each bid upon submission. The tied bid with the highest pseudo-random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

101. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.

## **5. Bidding**

102. All bidding will take place remotely either through the FCC auction bidding system or by telephonic bidding. There will be no on-site bidding during Auction 83. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

103. An Auction 83 bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits designated for that applicant in Attachment A of the *Auction 83 Procedures Public Notice* and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits designated for that applicant in Attachment A of the *Auction 83 Procedures Public Notice*.

104. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID<sup>®</sup> token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a *round summary* for each round after they have completed all of their activity for that round.

105. If a bidder has sufficient eligibility to place a bid on the particular construction permit, eligible bidders will be able to place bids on a given construction permit in any of up to nine pre-defined bid amounts in each round. For each construction permit, the FCC auction bidding system will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC auction bidding system also includes an *upload* function that allows text files containing bid information to be uploaded.

106. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that permit will be equal to its minimum opening bid amount. Once there are bids on a permit, minimum acceptable bids for the following round will be determined as described in the *Auction 83 Procedures Public Notice*.

107. During a round, an eligible bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid on the specific permits), remove bids placed in the current bidding round, or permanently reduce eligibility. If multiple bids are submitted for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with construction permits for which the bidder has removed bids do not count towards current activity.

## **6. Bid Removal and Bid Withdrawal**

108. In the *Auction 83 Comment Public Notice*, the Bureaus explained bid removal procedures in the FCC auction bidding system. Each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively unsubmits the bid. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

109. In the *Auction 83 Comment Public Notice*, the Bureaus proposed to prohibit bidders from withdrawing any bid after close of the round in which that bid was placed. The Bureaus received no comment on this issue of bid withdrawal. Accordingly, the Bureaus will prohibit bid withdrawals in Auction 83. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

## **7. Round Results**

110. Reports reflecting bidders' identities for Auction 83 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

111. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is

FCC-held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

## **8. Auction Announcements**

112. The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

## **V. POST-AUCTION PROCEDURES**

113. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing deadlines for submitting down payments, final payments, and long-form applications (FCC Forms 349).

### **A. Down Payments**

114. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 83 to twenty percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

### **B. Final Payments**

115. Each winning bidder will be required to submit the balance of the net amount for each of its winning bids within ten business days after the applicable deadline for submitting down payments.

### **C. Long-Form Applications (FCC Form 349)**

116. The Commission's rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station) and required exhibits for each construction permit won through Auction 83. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. The Commission's rules also provide that a winning bidder in a commercial broadcast spectrum auction is

required to submit an application filing fee with its post-auction long-form application. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice. An Auction 83 applicant that has its long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

**D. Default and Disqualification**

117. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 83 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

118. In the *Auction 83 Comment Public Notice*, the Bureaus proposed to set the percentage of the applicable bid to be assessed as an additional payment for any Auction 83 default at 20 percent of the applicable bid. The Bureaus received no comment on this proposal, and it is therefore adopted.

119. Finally, in the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

**E. Refund of Remaining Upfront Payment Balance**

120. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. To access the refund form, bidders are encouraged to use the Refund Information icon found on the *Auction*

*Application Manager* page or through the Refund Form link available on the *Auction Application Submit Confirmation* page in the FCC auction application system. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by mail or fax as instructed below.

121. If a bidder has elected not to complete the Refund Form through the Auction Application Manager page, the Commission is requesting that all information listed below be supplied in writing.

Name, address, contact and phone number of Bank

ABA Number

Account Number to Credit

Name of Account Holder

FCC Registration Number (FRN)

The refund request must be submitted by fax to the Revenue & Receivables Operations Group/Auctions at (202) 418-2843 or by mail to:

Federal Communications Commission

Financial Operations

Revenue & Receivables Operations Group/Auctions

Gail Glasser

445 12th Street, SW, Room 1-C864

Washington, DC 20554

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578 or Theresa Meeks at (202) 418-2945.

## **VI. FINAL REGULATORY FLEXIBILITY CERTIFICATION**

122. The Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, requires that a regulatory flexibility analysis be prepared for a notice-and-comment rulemaking proceeding, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The RFA generally defines the term small entity as having the same meaning as

the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act, 5 U.S.C. 601(3). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C 632.

123. As required by the RFA, an Initial Regulatory Flexibility Certification (IRFC) was incorporated in the January 16, 2018, public notice seeking comment on competitive bidding procedures to be used in Auction 83. A summary of this public notice was published at 83 FR 4455, Jan. 31, 2018. The *Auction 83 Procedures Public Notice* implements competitive bidding rules adopted by the Commission in multiple notice-and-comment rulemaking proceedings, as well as establishes by the Bureaus, on delegated authority, additional procedures for competitive bidding in Auction 83 for certain FM translator construction permits. More specifically, the Public Notice provides an overview of the procedures, terms and conditions governing Auction 83 and the post-auction application and payment processes. The Public Notice also provides instructions for Auction 83 applicants to review, verify and update their previously filed short-form applications during the upcoming Remedial Window, as required. In addition, the Public Notice addresses three filings submitted by parties in response to the Auction 83 Comment Public Notice.

124. Auction 83 is a closed auction, therefore the specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 83 Comment Public Notice* will affect only the 57 individuals or entities listed in Attachment A to the *Auction 83 Procedures Public Notice* who are eligible to complete the remaining steps to become qualified to bid in this auction. The latest available U.S. Census Bureau data show that there were 2,849 radio station firms that operated in 2012. Of that number 2,806 firms operated with annual receipts below the SBA's small business size standard of firms having \$38.5 million or less in annual receipts. The 57 eligible individuals or entities for Auction 83 include firms of all sizes and constitute approximately two percent of all firms that operated and of firms meeting the SBA small business size standard. Consequently, because the proposed procedures and

minimum opening bid amounts would affect a maximum of 57 radio station firms, or approximately two percent of the total, and not all 57 are small entities, the Bureaus find that a substantial number of small entities would not be affected by these competitive bidding procedures or minimum opening bid amounts contained in the *Auction 83 Procedures Public Notice*. Therefore, the Bureaus certify that these competitive bidding procedures and minimum opening bid amounts announced in the *Auction 83 Procedures Public Notice* will not have a significant economic impact on a substantial number of small entities.

125. The Bureaus will send a copy of the *Auctions 83 Procedures Public Notice*, including this Final Regulatory Flexibility Certification, in a Report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the *Auctions 83 Procedures Public Notice* and this Final Regulatory Flexibility Certification will be sent to the Chief Counsel for Advocacy of the SBA pursuant to 5 U.S.C. 605(b).

FEDERAL COMMUNICATIONS COMMISSION.

Gary Michaels,  
Deputy Chief, Auctions and Spectrum Access Division, WTB.

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